

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

FRANK SCIAMANDA,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

) Case No. RED-02-0003

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) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD
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I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at Washington State University, Compton Union Building, Pullman, Washington, on December 17, 2002. René Ewing, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Frank Sciamanda was present and was represented by Joaquin Hernandez, Attorney at Law, of Parr & Younglove, P.L.L.C. Donna Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a six-month reduction in salary for neglect of duty, insubordination, gross misconduct, malfeasance, and willful violation of agency policy. Respondent alleges that Appellant worked overtime without authorization, submitted modified copies of his time reports, and altered his June 2001 timesheet.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Parramore v Dep't of Social & Health Services, PAB No. D94-135 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Harper v. WSU, PAB No. RULE-00-0040 (2002); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Frank Sciamanda is a Secretary Senior and permanent employee for Respondent Washington State University. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 9, 2002.

2.2 Appellant has been employed with the Washington State University for approximately 20 years. He began working at the Facilities Operations Department on December 1, 1999 as a Secretary Senior. Appellant was a scheduled workweek employee. Appellant has received no prior corrective or disciplinary actions.

2.3 Carolyn Moore was Appellant's direct supervisor at Facilities Operations. The standard procedure at Facilities Operations is for employees to submit their leave slips for annual, sick or other leave taken. Approved overtime cards are also submitted for payment whenever overtime has been worked. A "Time Report" is generated and returned to each employee for review. If the information reflected on the timesheet is correct, the employee signs the form which states, "I certify that this is an accurate report of my work and leave." The time report is turned into the supervisor for review and approval.

1 2.4 During the time Ms. Moore supervised Appellant, she became aware that he was working
2 overtime hours that she had not authorized. Ms. Moore informed Appellant that he was required to
3 seek her approval prior to working any hours beyond his normal work schedule.
4

5 2.5 On May 8, 2000, Ms. Moore issued a memo to Appellant and Secretary Jessica Eugenio to
6 clarify office procedures, including overtime work. In her memo, Ms. Moore stated, "if you feel the
7 need to work over 8 hours, please let me know prior to working overtime each time you feel it's
8 necessary. ..."
9

10 2.6 On August 29, 2000, Ms. Moore again directed Appellant to notify her prior to working any
11 hours outside of his scheduled hours. Ms. Moore had been informed that Appellant had worked
12 additional hours over the weekend.
13

14 2.7 In July 2001 Ms. Moore directed Appellant to adjust his vacation time and/or work schedule
15 because he had worked unauthorized overtime. On July 31, 2001, Ms. Moore again reminded
16 Appellant of his duty to obtain permission to work overtime and to seek her authorization before
17 making any changes in his work schedule. On August 21, 2001, Appellant arrived to work 1.75
18 hours prior to the beginning of his shift. Ms. Moore informed Appellant that overtime had not been
19 approved and she directed him to adjust his work hours to ensure he did not work beyond his
20 normal eight-hour day.
21

22 2.8 In approximately September 2001, Appellant's position at Facilities Operations was
23 reallocated downward. As a result, Appellant had an option to demote to the Program Assistant
24 classification or accept a layoff. Appellant opted to be laid off and as a consequence of his layoff,
25 was offered a layoff option as a Secretary Senior at the WSU Foundation. Appellant accepted the
26 option, which was a lateral transfer, and he was subsequently appointed to the Secretary Senior

1 position. Walter G. Dryfoos, Executive Director/Vice President of the WSU Foundation, became
2 Appellant's direct supervisor.

3
4 2.9 September 25, 2001 was Appellant's last day of work at Facilities Operations. Prior to his
5 departure, Appellant provided Ms. Moore with 18 requests for overtime pay for the following dates:
6 October 9, 2000; October 23, 2000; December 31, 2000; January 3, 2001; January 9, 2001; January
7 10, 2002; January 19, 2001; May 17, 2001; June 26, 2001; June 27, 2001; June 29, 2001; June 30,
8 2001; July 18, 2001; July 21, 2001; August 6, 2001; August 8, 2001; August 17, 2001; and August
9 3, 2001. Appellant was requesting that he be compensated for 47.96 hours of overtime work.

10
11 2.10 Ms. Moore was unaware that Appellant had worked any overtime during those months
12 because he had never asked for her approval and had never informed her that he was working
13 additional hours.

14
15 2.11 The Fair Labor Standards Act requires employers to compensate employees for overtime
16 hours worked beyond their regular 40-hours in a week. As a result, Ms. Moore reviewed the
17 Facilities Building sign-in sheets, and confirmed that a total of 21.5 hours matched hours that
18 Appellant claimed to have worked as overtime. Appellant was subsequently paid for 21.5 hours of
19 overtime.

20
21 2.12 Appellant was notified that the University was contemplating taking disciplinary action
22 against him. On November 30, 2001, Appellant and his union representative met with Lawrence
23 Davis, Executive Director of Facilities Operations, and Walter G. Dryfoos, Executive Director/Vice
24 President of the WSU Foundation, to discuss the allegations and to give Appellant the opportunity
25 to respond to the charges that he worked overtime without obtaining supervisory approval and that
26 he modified his timesheets to reflect additional time worked.

1 2.13 During the meeting, Appellant stated that he had been advised to track his overtime hours
2 even though he had no intention of being paid for the time worked. Appellant stated that after his
3 position at Facilities Operations was reallocated downward, he became angry and decided to seek
4 payment for the additional hours. Appellant also stated that he felt obligated to work extra hours
5 because he had a heavy workload that he could not complete during his normal work hours and that
6 he was burdened by additional work after his coworker was out on sick leave. Appellant admitted
7 that he understood his obligation to seek approval prior to working overtime but asserted that he
8 was repeatedly denied approval to work overtime.

9
10 2.14 During the course of the meeting, Mr. Dryfoos and Mr. Davis reviewed Appellant's
11 timesheets and observed that Appellant had altered his June 2001 time report and added eight hours
12 of leave that had been deduced from his annual leave balance. Appellant stated that the deduction
13 of eight hours of leave was an error and that he corrected the error himself. Appellant had not
14 notified anyone that he was making the change.

15
16 2.15 Following the meeting, Mr. Davis and Mr. Dryfoos conferred and made a joint
17 determination that Appellant had engaged in misconduct. As Executive Director, Mr. Davis was
18 the appointing authority for Facilities Operations. Both Mr. Davis and Mr. Dryfoos felt that
19 Appellant's failure to request overtime and his working overtime resulted in the department paying
20 him additional hours, which had budget implications for the department. They felt that Appellant's
21 actions could not be condoned. After considering Appellant's responses to the charges, they did not
22 feel that Appellant presented any mitigating facts for working unauthorized overtime and for
23 altering timesheets. In determining the level of discipline, Mr. Davis and Mr. Dryfoos concluded
24 that a six-month reduction in pay would deter Appellant and others from arbitrarily working
25 overtime without obtaining prior approval.

1 2.16 By letter dated December 13, 2001, Mr. Davis and Mr. Dryfoos cosigned a letter to
2 Appellant informing him of his six-month reduction in pay (from range 33, step K, to step I),
3 effective from January 1, 2002 to June 30, 2002. Mr. Davis and Mr. Dryfoos alleged that Appellant
4 1) worked overtime without authorization; 2) submitted amended timesheets that he had previously
5 submitted; and 3) altered a copy of his June 2001 time report.

7 **III. ARGUMENTS OF THE PARTIES**

8 3.1 Respondent argues that Appellant was aware of his responsibility to obtain permission to
9 work additional hours. Respondent argues that Appellant, however, engaged in blatant, intentional
10 and deliberate working of overtime without first informing his supervisor. Respondent argues that
11 Appellant received repeated oral directives that he not work overtime as well as a written directive
12 to that effect. Respondent argues that despite his awareness, Appellant disregarded his supervisor's
13 directives and continued to work unauthorized overtime. Respondent argues that individual
14 employees cannot decide when they want to work overtime, and that in this case, the additional
15 hours paid to Appellant had a negative impact on the department's budget, which was already in a
16 deficit. Respondent argues that by law, the department was required to compensate Appellant for
17 overtime pay regardless of whether the overtime was approved. Respondent argues that the
18 discipline imposed is appropriate because the appointing authority wanted to deter other employees
19 from working unauthorized overtime hours.

20
21 3.2 Appellant asserts that he was disciplined for working too hard. Appellant admits he
22 understood the directives that he obtain prior approval to work overtime hours. However,
23 Appellant asserts that he had an overwhelmingly heavy workload and was covering the work for a
24 sick employee. Appellant asserts that as a result, he was unable to complete his job without
25 working additional hours. He further asserts that the department routinely denied his requests to
26 work additional hours. Appellant denies that he engaged in misconduct when he made changes to

1 his timesheets, he states he had no time to review them prior to signing them, and he denies that any
2 policy exists that addresses making changes to timesheets. Appellant further argues that correcting
3 errors on his June 2001 timesheets does not amount to gross misconduct or violate agency policy.
4 Appellant argues that the department overlooked his 20 years of employment and that the discipline
5 imposed was too harsh.

7 IV. CONCLUSIONS OF LAW

8 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
9 herein.

10
11 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
12 the charges upon which the action was initiated by proving by a preponderance of the credible
13 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
14 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
15 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

16
17 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
18 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
19 of Social & Health Services, PAB No. D86-119 (1987).

20
21 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
22 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
23 Dep't of Social & Health Services, PAB No. D94-025 (1995).

24
25 4.5 Respondent has proven by a preponderance of the credible evidence that Appellant
26 neglected his duty when he failed to follow the department's standard operating procedure to obtain

1 supervisory authorization prior to working overtime hours and when he modified timesheets he
2 originally certified were accurate. Appellant understood the department's expectations regarding
3 overtime work. Nonetheless, he deliberately worked hours beyond his scheduled workweek
4 without any notice to his supervisor, and he kept an alternate set of time records. Appellant's
5 refusal to follow repeated supervisory directives was unreasonable and constituted insubordination.
6 It is highly inappropriate for an employee to work overtime without proper notice to a supervisor.
7 Respondent has also met its burden of proving that Appellant engaged in misconduct when he
8 altered his June 2001 timesheet to add an additional eight hours to his leave balance.

9
10 4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
11 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
12 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
13 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

14
15 4.7 Respondent has met its burden of proving that Appellant's failure to obtain supervisory
16 approval prior to working overtime constituted gross misconduct. Appellant's willful disregard of
17 the department's requirement that he obtain prior approval to work overtime directly impacted
18 management's authority to determine when, and if, overtime work is necessary. More importantly,
19 Appellant's actions undermined management's discretion to determine whether the funds existed to
20 cover overtime expenses.

21
22 4.8 Willful violation of published employing agency or institution or Personnel Resources
23 Board rules or regulations is established by facts showing the existence and publication of the rules
24 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
25 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

1 4.9 Respondent has not met its burden of proof that Appellant violated policies regarding
2 overtime hours. While the department did have an operating procedure that was well understood by
3 Appellant, no evidence was produced that an overtime policy existed.

4
5 4.10 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to
6 do, or the performance of an act that ought not to be done, that affects, interrupts, or interferes with
7 the performance of official duty. Parramore v Dep't of Social & Health Services, PAB No. D94-
8 135 (1995).

9
10 4.11 Respondent has not met its burden of proving that the actions committed by Appellant
11 constituted malfeasance.

12 4.12 Respondent has met its burden of supporting the charges of neglect of duty, insubordination
13 and gross misconduct and proving that a six-month reduction in salary is appropriate under the facts
14 and circumstances. Therefore, the disciplinary sanction should be affirmed.
15

16 **V. ORDER**

17 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Frank Sciamanda is denied.
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19 DATED this _____ day of _____, 2003.
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21 WASHINGTON STATE PERSONNEL APPEALS BOARD

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23 _____
24 Walter T. Hubbard, Chair
25 _____
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Gerald L. Morgen, Vice Chair

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